

1 Mitchell N. Reinis CSB 36131  
2 mreinis@thompsoncoburn.com  
3 Rowena Santos CSB 210185  
4 rsantos@thompsoncoburn.com  
5 THOMPSON COBURN LLP  
6 2029 Century Park East, 19th Floor  
7 Los Angeles, California 90067  
8 Tel: 310.282.2500 / Fax: 310.282.2501

9 Kathy A. Wisniewski (*pro hac vice*)  
10 kwisniewski@thompsoncoburn.com  
11 John W. Rogers (*pro hac vice*)  
12 jrogers@thompsoncoburn.com  
13 Stephen A. D'Aunoy (*pro hac vice*)  
14 sdaunoy@thompsoncoburn.com  
15 THOMPSON COBURN LLP  
16 One US Bank Plaza  
17 St. Louis, MO 63101  
18 Tel: 314.552.6000/ Fax: 314.552.7000

19 Attorneys for Defendant  
20 CHRYSLER GROUP LLC

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**

17 PETER VELASCO, et. al,  
18 Plaintiffs,  
19 v.  
20 CHRYSLER GROUP LLC,  
21 Defendant.

CASE NO. 2:13-CV-8080 DDP (VBKx)  
Assigned to the Honorable  
Dean D. Pregerson

**CHRYSLER GROUP LLC'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS THE SECOND AMENDED  
COMPLAINT; AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISMISS**

23 DATE: July 28, 2014  
24 TIME: 10:00 a.m.  
COURTROOM: 3

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## **NOTICE OF MOTION AND MOTION TO DISMISS**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, on July 28, 2014, at 10:00 a.m. in Courtroom 3 of the United States District Court for the Central District of California, located at 312 North Spring Street Los Angeles, California, Defendant Chrysler Group LLC will move under Federal Rule of Civil Procedure 12(b)(6) for an Order dismissing Plaintiffs' Second Amended Complaint.

The Motion will be made on the grounds that the Second Amended Complaint fails to state a claim upon which relief can be granted because: (1) Plaintiffs fail to satisfy the heightened pleading requirements of Rule 9(b); (2) Plaintiffs Carter, Young, Soule, and Melville have failed to plead any facts showing that Chrysler Group had a duty to disclose any information to them; (3) Plaintiff Young failed to plead facts showing that Chrysler Group made a direct sale to her or that it played any role in the sales transactions at issue; and (4) the Magnuson-Moss Warranty Act claim brought by Plaintiffs Lightfoot, Young, Soule, and Melville fails because a state statute is not a “written warranty” under the Act and a Total Integrated Power Module is not a component covered by the California Emission Warranty issued by Chrysler Group.

The motion will be based upon this Notice of Motion and Motion to Dismiss, Chrysler Group LLC's Memorandum of Points and Authorities in Support of Motion to Dismiss, Chrysler Group LLC's Request for Judicial Notice and attached exhibit, the pleadings and record in this case, and any additional evidence and arguments that may be presented at the hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on May 12, 2014.

1 DATED: May 28, 2014

Respectfully submitted,

2 **THOMPSON COBURN LLP**

3

4 By: */s/ Rowena Santos* \_\_\_\_\_

5 **MITCHELL N. REINIS**  
6 **ROWENA SANTOS**  
7 **KATHY A. WISNIEWSKI**  
8 **JOHN W. ROGERS**  
9 **STEPHEN A. D'AUNOY**  
10 Attorneys for Defendant  
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## I. INTRODUCTION

2 This case — which was filed only 6 months ago — has already become a  
3 revolving door for named plaintiffs. Out of the 4 originally named plaintiffs, only 1  
4 remains today. And, of the 7 named plaintiffs who were newly added to the First  
5 Amended Complaint (“FAC”), only 4 remain. In other words, 7 named Plaintiffs have  
6 already abandoned their claims in this case. And, they have done so for very good  
7 reasons. Among the dropped plaintiffs are ones: who purchased used vehicles and did  
8 not have a problem with them until they had been driven for tens of thousands of miles  
9 (Kendrick and Light); who had claims subject to arbitration (Ray); and who purchased  
10 vehicles for business purposes and thus lacked standing to pursue claims under  
11 consumer fraud laws (White). The abandonment of so many named plaintiffs so early in  
12 this case highlights the lack of typicality amongst them, and the resulting  
13 inappropriateness of pursuing this case as a class action.

14 When this Court dismissed the FAC, it allowed Plaintiffs to file a Second  
15 Amended Complaint (“SAC”). In the newly-filed SAC Plaintiffs allege that Defendant  
16 Chrysler Group LLC equipped their vehicles (and a wide variety of other vehicles) with  
17 a defective Total Integrated Power Module (“TIPM”). The SAC: (1) drops 4 Plaintiffs;  
18 (2) adds 3 new Plaintiffs;<sup>1</sup> (3) vastly expands the scope and number of proposed classes  
19 (making 8 separate classes of persons and 15 different models of vehicles manufactured  
20 over 5 model years);<sup>2</sup> (4) abandons 4 previously-pleaded causes of action;<sup>3</sup> and (5) adds  
21 1 new cause of action.<sup>4</sup> The SAC’s reshuffling of the named Plaintiffs and the claims

<sup>22</sup> Plaintiffs' addition of these three parties without the permission of this Court  
<sup>23</sup> violates Federal Rule of Civil Procedure 21.

25       <sup>3</sup> The dropped claims are: breach of express warranty; breach of implied  
26 warranty; violation of the New Mexico Unfair Practices Act; and violation of the  
California Song-Beverly Consumer Warranty Act.

<sup>27</sup> <sup>4</sup>The newly added claim is for violation of the Missouri Merchandising Practices Act.

1 they assert, however, does nothing to cure the many legal and pleading deficiencies  
2 previously noted by this Court. Accordingly, the SAC should be dismissed.

3 **II. ALLEGED FACTS**

4 **A. Plaintiffs' Alleged Vehicle Purchases And Repairs.**

5 **Marcos Galvan** — Plaintiff Galvan purchased a used 2011 Jeep Grand Cherokee  
6 from the Glen E. Thomas Dodge Chrysler Jeep dealership in Long Beach, California in  
7 November 2012. *See* SAC, ¶ 49. In April 2014, after his vehicle had been driven over  
8 70,000 miles, Galvan had problems starting his vehicle so he took it to the Rydell  
9 Chrysler Dodge Jeep dealership for service. Id. at ¶¶ 51-53. The dealership determined  
10 that the problem was caused by the TIPM. Id. at ¶ 53. Galvin paid approximately \$900  
11 to have the TIPM replaced. Id.

12 **Christopher Lightfoot** — Plaintiff Lightfoot purchased a new 2011 Jeep Grand  
13 Cherokee in January 2011 from the Walnut Creek Chrysler dealership in Walnut Creek,  
14 California. Id. at ¶ 54. In or around June 2013, Lightfoot had “sporadic” problems  
15 getting his Jeep to start. Id. at ¶ 57. In November 2013, after his vehicle had been  
16 driven 58,229 miles, Lightfoot could “rarely” start his Jeep so he took it to a dealership,  
17 which diagnosed the issue as a faulty TIPM. Id. at ¶¶ 57-58. The dealership repaired the  
18 TIPM at a cost of \$526.90. Id. at ¶ 58.

19 **Jimmy Pat Carter** — In October 2010, Plaintiff Carter purchased a new 2011  
20 Jeep Grand Cherokee from the Hollywood Chrysler Jeep dealership in Hollywood,  
21 Florida. Id. at ¶ 60. In late 2013, Carter had to replace the battery in his Jeep on two  
22 different occasions. Id. at ¶ 62. In December 2013, after his Jeep had been driven for  
23 77,900 miles, Carter could not get his Jeep to start so he had it towed to the Hollywood  
24 dealership. Id. at ¶¶ 62, 64. The dealership told Carter that the problem was with the  
25 Jeep’s TIPM and that the repair would cost approximately \$1,200. Id. at ¶ 62. Carter  
26 called Chrysler Group to complain about the need for the TIPM repair, and, as a matter  
27 of goodwill, Chrysler Group agreed to pay for all but \$100 of the repair. Id. at ¶ 63. On

1 December 23, 2013, the dealership replaced the TIPM in Carter’s vehicle for a cost of  
 2 \$100. Id. at ¶ 64.

3 **Jacqueline Young** — In January 2011, Plaintiff Young purchased a new 2011  
 4 Jeep Grand Cherokee from the Thompson Chrysler dealership in Baltimore, Maryland.  
 5 Id. at ¶ 65. In July 2013, after driving her vehicle for “more than 40,000 miles,” the  
 6 ignition would occasionally make a “grinding noise” and the vehicle would have trouble  
 7 starting. Id. at ¶ 67. In September 2013, after having difficulty starting her vehicle,  
 8 Young took her vehicle to the Thompson dealership. Id. at ¶ 68. The dealership advised  
 9 her that the TIPM needed to be replaced. Id. Young paid \$1,036.30 for the TIPM  
 10 repair. Id. at ¶ 71.

11 **Bradford Soule** — In February 2013, Plaintiff Soule purchased a used 2011 Jeep  
 12 Grand Cherokee from a Chrysler dealership in Brockton, Massachusetts. Id. at ¶ 72.  
 13 Five months later, Soule had trouble starting his Jeep, and he spent forty-five minutes  
 14 troubleshooting the ignition before he was finally able to get the vehicle to start. Id. at  
 15 ¶ 74. On August 17, 2013, at an unspecified mileage, Soule took his Jeep to the  
 16 dealership and told the service department that “he thought the issue may be with the  
 17 vehicle’s TIPM.” Id. at ¶ 76. Soule paid approximately \$100 to have the dealership run  
 18 a diagnostic test and “reset” the vehicle’s TIPM, but this did not fix the problem. Id.  
 19 The dealership told Soule that he needed to replace the vehicle’s TIPM. Id. On  
 20 September 3, 2013, after his vehicle had been driven 51,724 miles, Soule paid  
 21 approximately \$635 to have the TIPM in his Jeep replaced. Id. at ¶ 80.

22 **Elizabeth Dillon** — In March 2013, Plaintiff Dillon purchased a used 2011  
 23 Dodge Durango from the Spieler’s Ram Chrysler Dodge Jeep dealership in California,  
 24 Missouri. Id. at ¶ 82. Around September 2013, Dillon began having trouble starting her  
 25 Durango. Id. at ¶ 84. The Durango also “made noise” after it had been turned off, like  
 26 “something in the vehicle was still running.” Id. In mid-November, Dillon was driving  
 27 her vehicle and it “suddenly shut off and stalled.” Id. at ¶ 85. She put the vehicle into

1 park, started it, and drove home. Id. The next day she took her Durango to the  
 2 dealership, who told her that the TIPM needed a software update. Id. at ¶¶ 85-86.  
 3 Dillon paid \$57.29 to have the TIPM “flashed,” but that did not alleviate the problems  
 4 starting her Durango. Id. ¶ 86. In late November 2013, after her Durango had been  
 5 driven 76,521 miles, Dillon returned to the dealership. Id. at ¶ 87. The dealership was  
 6 able to replicate her problems starting the vehicle, and ultimately diagnosed the problem  
 7 to be with the TIPM. Id. Dillon paid \$985.92 for the repair. Id.

8 **John Melville** — On September 30, 2010, Plaintiff Melville purchased a new  
 9 2011 Jeep Grand Cherokee from the Cherry Hill Chrysler dealership in New Jersey. Id.  
 10 at ¶ 88. In May or June 2013, after driving his vehicle approximately 48,000 miles,  
 11 Melville had trouble starting his Jeep on “several occasions.” Id. at ¶ 90. Melville took  
 12 his vehicle to the dealership but it could find “nothing wrong.” Id. at ¶ 91. Two months  
 13 later, at an unspecified mileage, Melville’s Jeep would not start so he had it towed to the  
 14 Sea View Jeep dealership in Ocean Township, New Jersey. Id. at ¶ 92. The dealership  
 15 diagnosed the problem as a faulty fuel pump. Id. Melville did not believe the problem  
 16 was with the vehicle’s fuel pump, so he took his vehicle to the Cherry Hill Chrysler  
 17 dealership. Id. The Cherry Hill Chrysler dealership diagnosed the problem as a faulty  
 18 TIPM. Id. at ¶ 93. On September 27, 2013, Melville paid a \$100 deductible under an  
 19 extended warranty to have the TIPM replaced. Id. at ¶¶ 59, 95.

20 **B. Plaintiffs’ Allegations Of Defect.**

21 Plaintiffs allege that the “TIPM consists of a computer, fuses, and internal relays  
 22 and is responsible for controlling and distributing electrical power to the entire vehicle—  
 23 everything from steering and brakes, to the alarm, headlights, and the fuel pump.” *See*  
 24 SAC, ¶ 1. Plaintiffs claim that the TIPMs in their vehicles are “defective” and “fail[] to  
 25 reliably control and distribute power to various vehicle electrical systems and  
 26 component parts.” Id. at ¶ 22. Although Plaintiffs repeatedly refer to their TIPMs as  
 27 “defective,” they do not explain how their TIPMs are defective or what is wrong with

1 them. Rather, Plaintiffs describe a number of symptoms that might occur. They claim  
 2 that their vehicles “fail to start promptly and reliably [or] fail to start entirely”, “stall”,  
 3 “have fuel pumps that do not turn off”, “experience headlights and taillights shutting  
 4 off”, and “experience random and uncontrollable activity of the horn, windshield wipers,  
 5 and alarm system.” *Id.* at ¶ 23. Despite their apparent inability to describe what causes  
 6 these symptoms, many of which no Plaintiff has ever experienced, Plaintiffs allege that  
 7 the defect exists in all of the following **48** model/model years of vehicles:

- 8 • Model year 2011-2012 Jeep Grand Cherokee
- 9 • Model year 2011-2012 Dodge Durango
- 10 • Model year 2010-2014 Dodge Grand Caravan
- 11 • Model year 2010-2014 Chrysler Town & Country
- 12 • Model year 2010-2014 Chrysler Grand Voyager
- 13 • Model year 2012-2014 Dodge Ram Cargo Van
- 14 • Model year 2010-2012 Dodge Nitro
- 15 • Model year 2010-2012 Jeep Liberty
- 16 • Model year 2010-2012 Dodge Ram 1500 Pickup
- 17 • Model year 2010-2012 Dodge Ram 2500 Pickup
- 18 • Model year 2011-2012 Dodge Ram 3500 Cab Chassis
- 19 • Model year 2011-2013 Dodge Ram 4400/4500 Cab Chassis
- 20 • Model year 2010-2012 Dodge Ram 3500 Pickup
- 21 • Model year 2010-2014 Jeep Wrangler
- 22 • Model year 2010 Dodge Journey

23 **C. The California Emission Warranty That Accompanied Plaintiffs’ Vehicles.**

24 For vehicles certified for sale and registered in the States of California,  
 25 Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, Oregon,  
 26 Pennsylvania, Rhode Island, Vermont, and Washington, Chrysler Group issues a  
 27 “California Emission Warranty.” *See* Request for Judicial Notice (“RJN”), Ex. A. The

1 California Emission Warranty provides that if a vehicle fails a Smog Check inspection in  
 2 the first 3 years or 50,000 miles, Chrysler Group will make repairs to ensure that the  
 3 vehicle passes the inspection. Id. at p. 2. The California Emission Warranty also covers  
 4 the repair or replacement of certain specified emission-related parts that are defective.  
 5 Depending on the part, the coverage is either 3 years/50,000 miles, 7 years/70,000 miles,  
 6 8 years/80,000 miles, or 8 years/100,000 miles. Id. at pp. 2-5. A TIPM is not a  
 7 specified emission-related part covered under the California Emission Warranty. Id.

8 **D. Plaintiffs' Claims, Proposed Classes, And Requested Relief.**

9 Plaintiffs assert eight causes of action: (1) violation of the Consumer Legal  
 10 Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.* (brought by Plaintiffs Galvan  
 11 and Lightfoot); (2) violation of California’s Unfair Competition Law (“UCL”), Business  
 12 and Professions Code § 17200 *et seq.* (brought by Plaintiffs Galvan and Lightfoot);  
 13 (3) violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla.  
 14 Stat. §501.201 *et seq.* (brought by Plaintiff Carter); (4) violation of the Maryland  
 15 Consumer Protection Act (“MCPA”), Md. Code Com. Law, § 13-101 *et seq.* (brought by  
 16 Plaintiff Young); (5) violation of the Massachusetts Consumer Protection Act, Mass.  
 17 Gen. Laws, ch. 93A *et seq.* (brought by Plaintiff Soule); (6) violation of the Missouri  
 18 Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.* (brought by Plaintiff  
 19 Dillon); (7) violation of the New Jersey Consumer Fraud Act (“NJCFA”), N.J. Stat.  
 20 56:8-1 *et seq.* (brought by Plaintiff Melville); and (8) violation of the Magnuson-Moss  
 21 Warranty Act, 15 U.S.C. § 2301 *et seq.* (brought by Plaintiffs Lightfoot, Young, Soule,  
 22 and Melville). *See* SAC, ¶¶ 106-172.

23 Plaintiffs purport to bring their claims on behalf of eight separate classes of  
 24 purchasers and lessees of 15 different models of vehicles spanning five model years who  
 25 reside in 13 different states. Specifically, Plaintiffs Galvan and Lightfoot propose to  
 26 represent two separate classes which they define as “All persons who purchased or  
 27 leased a Class Vehicle in California for personal, family or household use” and “All

1 persons who purchased or leased a Class Vehicle in California.” Plaintiff Carter  
 2 proposes to represent a class of “All persons who purchased or leased a Class Vehicle in  
 3 Florida.” Id. at ¶ 97. Plaintiff Young proposes to represent a class of “All persons who  
 4 purchased or leased a Class Vehicle in Maryland primarily for personal, household,  
 5 family, or agricultural purposes.” Id. Plaintiff Soule proposes to represent a class of  
 6 “All persons who purchased or leased a Class Vehicle in Massachusetts.” Id. Plaintiff  
 7 Dillon proposes to represent a class of “All persons who purchased or leased a Class  
 8 Vehicle in Missouri.” Id. Plaintiff Melville proposes to represent a class of “All persons  
 9 who purchased or leased a Class Vehicle in New Jersey.” Id. Finally, Plaintiffs  
 10 Lightfoot, Young, Soule, and Melville propose to represent a class of “All persons who  
 11 purchased or leased a Class Vehicle in California, Connecticut, Maine, Maryland, New  
 12 Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, or Washington that required a  
 13 TIPM repair or replacement within seven years and seventh-thousand [sic] miles.” Id.  
 14 Each of these proposed classes include persons who no longer own or lease their vehicle,  
 15 and seven of them include persons who never experienced any TIPM problem.

16 For relief, Plaintiffs seek: “actual, statutory, punitive or any other form of  
 17 damages provided by and pursuant to the statutes”; “restitution, disgorgement or other  
 18 equitable relief”; “an order requiring Chrysler to adequately disclose and repair the  
 19 TIPM defect”; “an order enjoining Chrysler from incorporating the defective TIPM into  
 20 its vehicles in the future”; “pre-judgment and post-judgment interest”; and “reasonable  
 21 attorney fees and costs of suit, including expert witness fees”. Id., “Prayer For Relief”.

### 22 III. ARGUMENT

#### 23 A. The Law Governing Motions To Dismiss Under Rules 12(b)(6) And 9(b).

24 To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain  
 25 “enough facts to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal,  
 26 556 U.S. 662, 678 (2009); Bell Atlantic v. Twombly, 550 U.S. 544, 570 (2007). “[A]  
 27 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires

1 more than labels and conclusions, and a formulaic recitation of the elements of a cause  
 2 of action will not do.” Twombly, 550 U.S. at 555 (citation omitted). A court should not  
 3 accept as true conclusory legal allegations. Iqbal, 566 U.S. at 678.

4 Claims which sound in fraud, including claims brought under consumer fraud  
 5 statutes like the CLRA and UCL, are subject to the heightened pleading requirements of  
 6 Federal Rule of Civil Procedure 9(b). *See, e.g., Kearns v. Ford Motor Co.*, 567 F.3d  
 7 1120, 1125 (9th Cir. 2009). This standard requires a party to plead with “particularity.”  
 8 Id. This means that any “[a]verments of fraud must be accompanied by the who, what,  
 9 when, where, and how of the misconduct charged.” Vess v. Ciba-Geigy Corp., USA,  
 10 317 F.3d 1097, 1106 (9th Cir. 2003) (citation and internal quotation marks omitted).  
 11 “The plaintiff must set forth what is false or misleading about a statement, and why it is  
 12 false.” Id.

13 **B. Plaintiffs’ Consumer Fraud Claims Fail For Multiple Reasons.**

14 **1. Plaintiffs’ Consumer Fraud Claims Do Not Satisfy Rule 9(b).**

15 Under Rule 9(b), Plaintiffs are required to “state with particularity the  
 16 circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). Plaintiffs’ alleged  
 17 violations of various consumer protection statutes all sound in fraud, and the Ninth  
 18 Circuit has “specifically ruled that Rule 9(b)’s heightened pleading standards apply to  
 19 claims for violations” of such consumer protection statutes. Kearns, 567 F.3d at 1125.  
 20 This is true regardless of whether such claims are based on affirmative statements or  
 21 fraudulent omissions. Id. at 1127; *see also In re Google Phone Litig.*, 2012 WL  
 22 3155571, \*9 (N.D.Cal. 2012).<sup>5</sup>

23  
 24 <sup>5</sup>Courts have likewise held that claims brought under the consumer protection acts  
 25 of Maryland, New Jersey, Florida, Massachusetts, and Missouri are subject to the  
 26 heightened pleading requirements of Rule 9(b). *See, e.g., Spaulding v. Wells Fargo*  
 27 Bank, N.A., 714 F.3d 769, 781 (4th Cir. 2013); In re Toshiba America HD DVD  
Marketing & Sales Prac. Litig., 2009 WL 2940081, \*8 (D.N.J. 2009) (New Jersey);  
Llado-Carreno v. Guidant Corp., 2011 WL 705403, \*5 (S.D. Fla. 2011) (Florida);  
Martin v. Mead Johnson Nutrition Co., 2010 WL 3928707, \*3 (D. Mass. 2010)  
 (Massachusetts); Khaliki v. Helzberg Diamond Shops, Inc., 2011 WL 1326660, \*3  
 (W.D.Mo. 2011) (Missouri).

1 Plaintiffs do not allege that Chrysler Group made any affirmative  
 2 misrepresentations. Rather, each of Plaintiffs' consumer fraud claims is based on  
 3 virtually identical allegations of an allegedly fraudulent omission: that Chrysler Group  
 4 "fail[ed] to disclose, at the point of sale or otherwise, that the TIPM in Class Vehicles is  
 5 defective and poses a safety hazard." *See* SAC, ¶¶ 124, 129, 136, 146; *see also* *id.* at  
 6 ¶¶ 108, 155. In order to satisfy the specificity requirement of Rule 9(b) for a fraudulent  
 7 omission claim, a plaintiff "must describe the content of the omission and where the  
 8 omitted information should or could have been revealed as well as provide  
 9 representative samples of advertisements, offers, or other representations that plaintiff  
 10 relied on to make her purchase and that failed to include the allegedly omitted  
 11 information." *Eisen v. Porches Cars N. Am., Inc.*, 2012 WL 841019, \*3 (C.D.Cal. 2012)  
 12 (*quoting Marolda v. Symantec Corp.*, 672 F.Supp.2d 992, 1002 (N.D.Cal. 2009)); *see*  
 13 *also Erickson v. Boston Scientific Corp.*, 846 F.Supp.2d 1085, 1093 (C.D.Cal. 2011). A  
 14 plaintiff must also describe with particularity the facts showing how and why the  
 15 product is defective, how the defendant discovered the defect before the plaintiff's  
 16 purchase, the specific steps the defendant took to conceal the defect from the plaintiff  
 17 and other consumers, the plaintiff's reliance upon particular materials containing the  
 18 omission, and the basis for the defendant's affirmative duty to disclose the information.  
 19 *Eisen*, 2012 WL 841019 at \*3; *Tait v. BSH Home Appliances Corp.*, 2011 WL 1832941,  
 20 \*3 (C.D.Cal. 2011); *Kent v. Hewlett-Packard Co.*, 2010 WL 2681767, \*12 (N.D.Cal.  
 21 2010); *Berenblat v. Apple, Inc.*, 2010 WL 1460297, \*\*8-9 (N.D.Cal. 2010); *see also*  
 22 *Glass v. BMW of N. Am., LLC*, 2011 WL 6887721, \*8 (D.N.J. 2011).

23 Counts I through VII are devoid of the allegations necessary to meet the  
 24 heightened pleading requirements of Rule 9(b). There is nothing in the SAC describing  
 25 precisely what information was withheld from Plaintiffs, where the omitted information  
 26 should (or could) have been revealed, or what advertisements, brochures, articles, or  
 27 promotional or other materials Plaintiffs actually read that may have disclosed the

1 withheld information. Plaintiffs also do not plead sufficient facts showing that Chrysler  
 2 Group had an affirmative duty to disclose the alleged defect to consumers under most of  
 3 the state laws they invoke. *See infra.*

4 Plaintiffs' failure to comply with Rule 9(b) requires dismissal of the consumer  
 5 fraud claims set forth in Counts I through VII.

6 **2. Plaintiffs Have Not Adequately Alleged A Duty To Disclose Under  
 7 Many Of The State Laws They Invoke.**

8 *Count III (brought by Plaintiff Carter):* Omissions are not actionable as  
 9 fraudulent representations under Florida law unless the party omitting the information  
 10 owes a duty to disclose the information. Taylor, Bean & Whitaker Mortg. Corp. v.  
 11 GMAC Mortg. Corp., 2008 WL 3200286 (M.D.Fla. 2008). And, Florida law does not  
 12 automatically support a duty of disclosure for a FDUTPA claim. Virgilio v. Ryland  
 13 Group, Inc., 680 F.3d 1329, 1338 (11th Cir. 2012) (dismissing Plaintiff's FDUTPA non-  
 14 disclosure claim because "the alleged duty of disclosure did not exist under Florida  
 15 law."). In other words, simply selling a defective product is not a violation of the  
 16 FDUTPA. *See, e.g., Jovine v. Abbott Laboratories, Inc.*, 795 F.Supp.2d 1331, 1342  
 17 (S.D. Fla. 2011) ("Plaintiff, however, does not explain how selling a defective product,  
 18 in and of itself, is a deceptive trade practice. Ostensibly, it would not be a violation of  
 19 FDUTPA to sell a broken-down car or an inoperable computer provided the seller did  
 20 not misrepresent the items' qualities to the seller."). For a defendant to owe a duty of  
 21 disclosure under Florida law, it must have "information that the other party has a right to  
 22 know because of a fiduciary or other relationship founded on trust and confidence  
 23 between them." Advisors Capital Investments, Inc. v. Cumberland Casualty & Surety  
 24 Co., 2007 WL 220189, \*3 (M.D.Fla. 2007). No such relationship is alleged here.  
 25 Indeed, Chrysler Group was not even involved in the sale transaction at issue, as Carter  
 26 implicitly acknowledges when he offers nothing other than the conclusory allegation that  
 27 Chrysler Group failed to disclose that "the TIPM in Class Vehicles is defective and

1 poses a safety hazard.” SAC, ¶ 124. Because Carter has failed to allege any supporting  
 2 facts supporting a duty to disclose, Count III should be dismissed.

3 *Count IV (brought by Plaintiff Young):* In Maryland, as elsewhere, there can be  
 4 no liability for failure to disclose “absent some duty to disclose.” Morris v. Osmose  
 5 Wood Preserving, 667 A.2d 624, 638, fn. 12 (Md. 1995); *see also Hogan v. Maryland*  
 6 State Dental Ass’n, 843 A.2d 902, 908 (Md.App. 2004) (“Typically non-disclosure does  
 7 not constitute fraud unless a special duty to disclose exists”). Maryland courts have long  
 8 drawn a distinction between “concealment” and “non-disclosure,” indicating that the  
 9 former requires some affirmative statement or conduct which prevents a person from  
 10 acquiring knowledge, while the latter is simply “a failure to reveal facts.” Gegeas v.  
 11 Sherrill, 147 A.2d 223, 225 (Md. 1958); *see also Redding v. Ameriprise Auto & Home*  
 12 Ins., 2012 WL 1268327, \*5 (D.Md. 2012). In the latter situation, a duty to disclose  
 13 arises only “in a few special types of transactions” such as insurance contracts and  
 14 fiduciary dealings. Gegeas, 147 A.2d at 225; *see also Latty v. St. Joseph’s Society of*  
 15 the Sacred Heart, Inc., 17 A.3d 155, 165 (Md.App. 2011) (“A duty to disclose is  
 16 typically predicated on a confidential or fiduciary relationship between two parties”).  
 17 Absent such “special” circumstances, “there is no duty upon a party to a transaction to  
 18 disclose facts to the other party.” Gegeas, 147 A.2d at 225; Rhee v. Highland  
 19 Development Corp., 958 A.2d 385, 389-90 (Md.App. 2008).

20 Here, Young admits that Chrysler Group was not even “a party to [the]  
 21 transaction” underlying her claim as she purchased her vehicle from a different entity.  
 22 And, there are no allegations that Chrysler Group took any affirmative action in an effort  
 23 to impede Young’s ability to discover the alleged defect; indeed, Young alleges only that  
 24 Chrysler Group had certain knowledge about a defect that it did not pass on to her. But,  
 25 there are no allegations supporting the existence of any fiduciary or confidential  
 26 relationship with Chrysler Group or that there was a “special” type of transaction giving  
 27 rise to a duty to disclose under Maryland law. Count IV must therefore be dismissed.

1       *Count V (brought by Plaintiff Soule):* Massachusetts imposes a duty of disclosure  
 2 only when there is a special relationship such a fiduciary relationship, or when an earlier  
 3 statement was misleading at the time it was made. In re Access Cardiosystems, Inc., 404  
 4 B.R. 593, 643 (D.Mass. 2009) (“The Massachusetts Supreme Judicial Court has long  
 5 adhered to the ‘rule of nonliability for bare nondisclosure’). A mere non-disclosure of  
 6 known information is insufficient to support a claim under Massachusetts Consumer  
 7 Fraud Act. Nei v. Boston Survey Consultants, Inc., 466 N.E.2d 681, 683-84 (Mass.  
 8 1983); *see also* Indus. General Corp. v. Sequoia Pacific Systems Corp., 44 F.3d 40, 46  
 9 (1st Cir. 1995) (where no duty to disclose existed based on a fiduciary relationship, no  
 10 cause of action lies under Chapter 93A). The SAC is devoid of facts establishing that  
 11 Plaintiff Soule had any special relationship with Chrysler Group or that there was any  
 12 prior misleading statement made. Count V should be dismissed.

13       *Count VII (brought by Plaintiff Melville):* Under New Jersey law, there is no  
 14 affirmative duty to disclose information unless there is a fiduciary or special relationship  
 15 between the parties. United Jersey Bank v. Kensey, 306 N.J. Super. 540, 551 (App.Div.  
 16 1997); Lightning Lube v. Witco Corp., 4 F.3d 1153, 1185 (3d Cir. 1993). Melville does  
 17 not plead any facts establishing that there was any fiduciary or special relationship  
 18 between him and Chrysler Group. And, there was none. *See, e.g., Green v. General*  
 19 *Motors Corp.*, 2003 WL 21730592, \*8 (N.J.App. 2003) (dismissed NJCFA omission  
 20 claim holding that an automotive manufacturer has no special relationship or duty to  
 21 disclose safety-related design defect); Harvey v. Nissan North America, Inc., 2005 WL  
 22 1252341, \*3 (N.J. Super. 2005) (finding automotive manufacturer has no duty to  
 23 disclose possible economic losses). In fact, New Jersey law is clear: “the failure of a  
 24 manufacture or seller to advise a purchaser that a part of a vehicle may breakdown or  
 25 require repair after the expiration of the warranty period cannot constitute a violation of  
 26 the NJCFA.” Glass, 2011 WL 5887721 at \*9 (*quoting Perkins v. DaimlerChrysler*  
 27  
 28

1 Corp., 383 N.J.Super 99, 112, 890 A.2d 997 (App.Div. 2006)); *see also* Alban v. BMW  
 2 of N. Am., 2011 WL 90014 (D.N.J. 2011) (same). Count VII must be dismissed.

3 **3. Plaintiffs Young's Maryland Consumer Protection Act Claim In  
 4 Count IV Fails For An Additional Reason.**

5 Young's MCPA omissions-based claim also fails because there are no allegations  
 6 that Chrysler Group made any direct sale to her or that it played any role in the sale  
 7 transaction to which she was a party (and it did not). To be actionable under the MCPA,  
 8 the alleged wrongful conduct “must occur in the sale or offer for sale to the consumer.”  
 9 Morris v. Osmose Wood Preserving, 667 A.2d 624, 635-37 (Md. 1995). Only in  
 10 “limited circumstances” does liability under the MCPA extend to those who are not  
 11 direct sellers. MRA Property Management, Inc. v. Armstrong, 43 A.3d 397, 412 (Md.  
 12 2012). To impose MCPA liability on a person or entity who is not a direct seller, there  
 13 must be allegations that the non-seller committed a deceptive act that “so infect[ed] the  
 14 sale or offer for sale to a consumer that the law would deem the practice to have been  
 15 committed ‘in’ the sale or offer for sale.” *Id.* (*quoting Morris*, 667 A.2d at 635).

16 Here, Young pleaded no facts establishing that Chrysler Group was a direct seller  
 17 to her of any product (and it was not). *See* SAC, ¶¶ 65-71. Nor has Young set forth any  
 18 facts sufficient to support the notion that Chrysler Group made any affirmative  
 19 representations to her about the quality of her vehicle. *Id.* Moreover, the allegations of  
 20 the SAC do not support the notion that Chrysler Group’s purported non-disclosure was  
 21 sufficient to fit within the “limited circumstances” for imposing liability against a non-  
 22 seller like Chrysler Group. In fact, it is highly questionable whether the “so infect[ed]  
 23 the sale or offer” standard could ever be applied to a non-seller who is alleged to have  
 24 done nothing other than remain silent in the course of a transaction in which it does not  
 25 participate. For this additional reason, Count IV should be dismissed.

1    **C. The Magnuson-Moss Warranty Act Claim In Count VIII Fails For Multiple**  
 2    **Reasons.**

3    In Count VIII, Plaintiffs Lightfoot, Young, Soule, and Melville allege that  
 4    Chrysler Group violated the Magnuson-Moss Warranty Act (“MMWA”). *See* SAC,  
 5    ¶ 158-172. Plaintiffs’ MMWA claim is premised on the notion that Chrysler Group  
 6    breached a 7 year/70,000 miles “Emissions-Related Defects Warranty.” *Id.* at ¶ 162.  
 7    More specifically, Plaintiffs claim that a TIPM is a “‘High Priced’ emissions-related  
 8    part” and is thus covered for 7 year/70,000 miles under Cal. Code Regs. § 2037 and the  
 9    laws of those states that have adopted this provision, and that Chrysler Group breached  
 10   this warranty by not providing a free repair during the warranty period. *Id.* at ¶ 163-  
 11   167. Plaintiffs’ MMWA claim fails as a matter of law for at least three reasons.

12    *First*, Plaintiffs’ allegation that Cal. Health & Safety Code § 43205, 13 Cal. Code  
 13   Regs § 2035 *et seq.*, and various other state statutes constitutes a “written warranty”  
 14   under 15 U.S.C. § 2301(6) is incorrect. *See* SAC, ¶ 162. The MMWA expressly defines  
 15   a “written warranty” as:

16        any written affirmation of fact or written promise made  
 17        in connection with the sale of a consumer product *by a*  
 18        **supplier** to a buyer which relates to the nature of the  
 19        material or workmanship and affirms or promises that  
 20        such material or workmanship is defect free or will meet  
 21        a specified level of performance over a specified period  
 22        time.

23    15 U.S.C. § 2301(6)(A) (emphasis added). Because a state statute is not a “written  
 24    promise made ... by a supplier” (*id.*) an alleged violation of the statute cannot be the  
 25    basis of an MMWA claim. *See, e.g.*, Viggiano v. Hansen Natural Corp., 944 F.Supp.  
 26    877, 898 (C.D.Cal. 2013) (noting that “the MMWA narrowly defines the meaning of  
 27    ‘written warranty’” and dismissed MMWA claim because alleged warranty did not fit  
 28    within the definition of “written warranty” under 15 U.S.C. § 2301(6)); Hairston v.  
South Beach Beverage Co., Inc., 2012 WL 1893818, \*6 (C.D.Cal. 2012) (same).

1        *Second*, even if state statutes and regulations could constitute a “written warranty”  
 2 under the MMWA (which they cannot), Plaintiffs’ MMWA claim still fails because a  
 3 TIPM is not an emissions-related part under Cal. Code Regs § 2035 *et seq.* Plaintiffs  
 4 seem to recognize this fact as the best that they can do is to aver that a TIPM “affects  
 5 emissions” because it “affects” or “controls” other actual “emission-related parts” (e.g.,  
 6 a fuel pump). *See* SAC, ¶ 163. But, utilizing Plaintiffs’ logic, virtually every  
 7 component — even a battery and accelerator pedal — would be subject to the long-term  
 8 emissions warranty imposed by the statute because virtually all parts can be linked by  
 9 “six degrees of separation” (and probably less) to a another part that plays some role in  
 10 “affecting” or “controlling” an actual emissions-related part. For example, the battery  
 11 provides power to the catalytic converter (an emissions-related part), but that does not  
 12 make a battery covered under the California Emission Warranty. Under Plaintiffs’  
 13 reasoning, however, the battery (and virtually all parts) would be covered under the  
 14 California Emission Warranty simply because it “affects” an emissions-related part.  
 15 Indeed, Plaintiffs submitted to this Court the California Air Resources Board Emissions-  
 16 Related Part List and a TIPM is **not** listed as an emissions-related part that must be  
 17 covered under the statute and implementing regulations. *See* Plaintiffs’ Request for  
 18 Judicial Notice Exhibit A filed on 3/20/14 (Doc. No. 34-1).

19        *Finally*, if there is any doubt that a TIPM is not an emissions-related part, one  
 20 only needs to look at the California Emission Warranty issued by Chrysler Group. In  
 21 2011, for vehicles sold in the States of California, Connecticut, Maine, Maryland,  
 22 Massachusetts, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island,  
 23 Vermont, and Washington, Chrysler Group issued a “California Emission Warranty.”  
 24 *See* RJD, Ex. A.<sup>6</sup> The California Emission Warranty specifically lists the emissions-

25  
 26        <sup>6</sup> The four Plaintiffs that are bringing the MMWA claim all own a 2011 model-  
 27 year Jeep Grand Cherokee. Thus, Chrysler Group is only submitting the California  
 Emission Warranty that accompanied that vehicle.

1 related parts that are covered for 7 years/70,000 miles. *See id.* at p. 4. A TIPM is **not**  
2 listed as a covered part under that warranty. *Id.*

3 Plaintiffs' MMWA claim should be dismissed.

4 **IV. CONCLUSION**

5 For the reasons outlined herein, Defendant Chrysler Group LLC respectfully  
6 requests that this Court dismiss Plaintiffs' Second Amended Complaint in its entirety.

7 DATED: May 28, 2014

8 Respectfully submitted,

9 **THOMPSON COBURN LLP**

10 By: */s/ Rowena Santos* \_\_\_\_\_

11 **MITCHELL N. REINIS**  
12 **ROWENA SANTOS**  
13 **KATHY A. WISNIEWSKI**  
14 **JOHN W. ROGERS**  
15 **STEPHEN A. D'AUNOY**  
16 Attorneys for Defendant  
17 CHRYSLER GROUP LLC

1  
**CERTIFICATE OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the  
3 age of 18 and not a party to the within action. My business address is 2029 Century  
4 Park East, Suite 1900, Los Angeles, CA 90067.

5 A true and correct copy of the foregoing document described as:  
6

7  
**CHRYSLER GROUP LLC'S NOTICE OF MOTION AND  
MOTION TO DISMISS; AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION TO DISMISS**

8 will be served or was served (a) on the judge in chambers in the form and manner  
9 required by Local Rules and (b) in the manner indicated below.

10  **(TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC  
FILING (“NEF”)** – Pursuant to controlling General Order(s) and Local Rule(s), the  
11 foregoing document will be served by the Court via NEF and hyperlink to the document.  
12 On May 28, 2014, I checked the CM/ECF docket for this case and determined that the  
13 following persons are on the Electronic Mail Notice List to receive NEF transmission at  
the email address(es) indicated on the attached service list.

14 I declare under penalty of perjury under the laws of the United States of America  
15 that the foregoing is true and correct.

16 Executed on **May 28, 2014**, at Los Angeles, California.

17  
18 Michisha R. Jiles  
19 (Type or print name)

17  
18 /s/ *Michisha R. Jiles*  
19 (Signature)

20  
21  
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28

## **SERVICE LIST**

*Peter Velasco, et al. v. Chrysler Group LLC*  
Case No. 2:13-CV-8080 DDP (VBKx)

Caitlyn D. Finley

Dylan S. Hughes

Eric H. Gibbs

David K Stein

David H. Stein  
Girard Gibbs LLP

601 California Street 14th Floor

301 California Street, 14th

Telephone: 415-981-4800

Facsimile: 415-981-4846

Email: [cdf@girardgibbs.com](mailto:cdf@girardgibbs.com)

Email: [edr@girardgibbs.com](mailto:edr@girardgibbs.com)  
[dsh@girardgibbs.com](mailto:dsh@girardgibbs.com)

ash@girardgibbs.com  
ehg@girardgibbs.com

eng@girardgibbs.com  
ds@girardgibbs.com

us@ghardgous.com

Joshua G. Konecky

Joshua G. Koniecky  
Todd M. Schneider

Todd M. Schneider  
Schneider Wallace Cottrell Karp

**Schneider Wallace Cotterell Konecky LLP**  
180 Montgomery Street Suite 2000

180 Montgomery Street Suite 2000  
San Francisco, CA 94104

San Francisco, CA 94104  
Telephone: 415 421 710

Telephone. 413-421-7100  
Fax. 413-421-7105

Facsimile: 415-421-7105

Email: [jkonecky@schnederwallace.com](mailto:jkonecky@schnederwallace.com)

tschneider@schneiderwallace.com

*Attorneys for Plaintiffs*